U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 0 8 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences. The petitioner seeks employment as a traffic engineer for the City of [redacted] Texas. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits his own statement and a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner claims eligibility for classification as an alien of exceptional ability in the sciences, the arts or business. The record readily establishes that the petitioner, whose occupation requires at least a bachelor's degree and who holds a post-baccalaureate degree, qualifies as a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(3)(i). A determination regarding the petitioner's claim of exceptional ability would be moot; an additional finding of exceptional ability would not establish eligibility for the national interest waiver. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, a given alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on December 23, 2011. On Part K of the accompanying ETA Form 9089 Application for Permanent Employment Certification, the petitioner described his duties in his current position:

> Duties consist of receiving citizen requests regarding traffic issues, determining the use and placement of traffic control devices, and evaluating traffic data and applying proper engineering principles and practices which result in the development of signal timing and implementation plans, and performing traffic engineering studies.

> Address concerns and resolved a variety of engineering requests from the City Council and citizens.

In a statement submitted with the petition, counsel stated:

> While the Beneficiary's employment may be limited to a particular geographic area, the City of [redacted] and the roads and bridges of the City are connected to the State and to the national transportation system. The safety, operation and maintenance of the traffic patterns of the City serve the interests of other regions of the country. Sometimes, the impact in a local situation could have a national bearing. For instance, Beneficiary works with the [redacted] and [redacted] in managing their pre and post-game traffic. In fact, Beneficiary was involved with planning traffic management for the [redacted] – an event watched by millions of fans all over the U.S.

"Millions of fans" surely watch the [redacted] each year, including in [redacted] when it took place in [redacted] but the overwhelming majority of those fans watched on television and were thus unaffected by the city's traffic arrangements relating to the event. A major event such as the [redacted] involves temporary commitments by many industries, such as food service, utilities, law enforcement, hospitality and sanitation. The number of industries and professions involved, in conjunction with the relative infrequency with which any one city hosts such an event, does not make a strong case for linking permanent immigration benefits to such events.

Counsel continued:

> For the past 6 years, the City of [redacted] and the State of Texas have invested heavily in Beneficiary's education, training, advancement and expertise. The position for which Beneficiary was hired by the City of [redacted] TX was vacant for a period of two years. No able, willing, and qualified U.S. employees were available to fill the vacancy. . . . Beneficiary is a 'key' employee of the City. . . . Through his involvement with City planning and management, Beneficiary has been involved with Super Bowl planning, City events planning and [redacted] and [redacted] stadia traffic planning. . . . It is respectfully submitted that with limited resources, budget constraints and political polarization, it would be extremely difficult for the City to find a replacement for Beneficiary through the Labor Certification process.

In the passage quoted below, *NYSDOT* addressed this issue:

> [USCIS] does not dispute that the beneficiary provides valuable services to his employer; at issue here is the effect of such services on the national interest when compared to others in the profession. [USCIS] also does not dispute the advantage to the petitioner of retaining qualified staff rather than training inexperienced, newly hired workers. The contention that no other experienced workers are available, however, should be tested on an application for a labor certification.

Id. at 222. The labor certification process exists precisely for the purpose of proving an employer's claim that no qualified United States worker seeks a given position. Therefore, the assertion that no qualified replacement is available is not a viable basis for granting the waiver.

The remainder of counsel's introductory statement consists of quotations from witness letters, to be considered below. The petitioner is studying for a doctorate at the where he previously earned a master's degree. During the course of his studies, the petitioner had produced a master's thesis and papers for presentation at various professional gatherings. Dissemination of research in this way lends national scope to the petitioner's work, by making it available to other researchers. The petitioner, however, has not shown that preparation of such papers would be a consistent part of his work at a traffic engineer for the City of as opposed to a function of his inherently temporary graduate studies at the The petitioner will not permanently be a student, and therefore permanent immigration benefits cannot hinge on activities that the petitioner will undertake only as a student.

Three of the witnesses are current employees or officials of the City of interim director of Public Works, affirmed that the petitioner's position "took more than two years to fill, and the investment the City has made in training [the petitioner] is significant." added that the petitioner "has a unique skill set that can be applied anywhere in the country – not just in Texas."

engineering operations manager, stated that the petitioner "is exceptional in his contributions, dedicated in its [*sic*] execution and conscientious about following up and ensuring the success of the projects with which he has been entrusted." asserted that the petitioner's "job duties involve a high degree of complexity that cannot be performed by a recent college graduate. . . . It would be extremely difficult to hire someone with the education, training and experience that [the petitioner] has without incurring considerable expense and possibly waiting several months, or years."

city traffic engineer and the petitioner's immediate supervisor, stated: "The City is not currently sponsoring immigrant petitions and that is the reason [the petitioner] is petitioning on his own." As noted previously, the classification the petitioner seeks normally requires a job offer. Labor certification is an integral element of the job offer requirement. The employer cannot unilaterally exempt its prospective employees from that requirement by refusing to participate in the labor certification process. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *NYSDOT*, 22 I&N Dec. 223.

Some of the petitioner's initial letters are from faculty members. stated that, due to the difficulty of replacing him, "the likelihood of [the petitioner] staying in his current position is clearly very high." also asserted that "as part of his Ph.D. program, [the petitioner] will be engaged in cutting edge research." As noted previously, the

petitioner's doctoral studies are inherently temporary, and a nonimmigrant classification exists to permit graduate study.

discussed the petitioner's research activities in very general terms. Rather than claiming any direct knowledge of these activities repeatedly used the phrase "I am given to understand . . . " to preface her assertions.

associate professor at stated that the petitioner received two scholarships in 2005, the recipients for which "are selected carefully and after a thorough review process. Being a recipient of the scholarship is a high honor and clearly represents the exceptional nature of a student's academic achievement and future potential." stated that the petitioner's duties with the City of "require an exceptional level of expertise. The event organizers would not entrust [the petitioner] with these duties if they did not think he was expertly capable of rendering these services."

Other letters are from traffic engineers and officials with related functions. director of Logistics and Planning for stated:

> I have worked with [the petitioner] in traffic management and preparation for the Stadium events here in Texas for several years. As part of our collaboration, [the petitioner] has performed critical work assignments in the planning and implementation process that requires an exceptional level of expertise. . . .
>
> [H]is expertise in the analysis of the City's traffic patterns, congestion and traffic signals has been extremely valuable in meeting our planning goals. These goals are important to our needs and the needs of the community we serve.

managing director of Event Operations for stated:

> What makes [the petitioner's] job exceptional is that he constantly has to use his advanced education and training (normally at a Master's level) in Urban Transportation Planning, Traffic Operations, Traffic Characteristics, Highway Design, etc. to perform the job duties of the position.

did not explain how those duties make the petitioner's "job exceptional" when compared to that of other traffic engineers in large cities. added that "the City of has tried to recruit qualified professionals for this and other positions in the transportation department. However, these positions have been extremely hard to fill and a similar position within the department continues to remain open."

director of Transportation Services for the City of Texas, worked with the petitioner on the and on "a regional signal timing project." In language nearly identical to letter, repeated the assertion that the petitioner's

"responsibilities require an exceptional level of expertise. would not have entrusted [the petitioner] with these duties if they did not believe he was capable of rendering these services." The issue is not whether the petitioner is capable of performing his assigned duties. Rather, the issue is whether it is in the national interest to waive the job offer requirement and ensure that the petitioner, rather than a qualified United States worker, remains in the petitioner's current position. (Applying for a labor certification does not mandate the petitioner's replacement, particularly if, as claimed, no qualified United States workers seek the job.)

director of Public Works for the City of Texas and former director of Public Works and Transportation for the City of discussed the important role that traffic engineers play. These assertions speak to the intrinsic merit of the occupation, which is not in dispute in this proceeding. then made two assertions somewhat at odds with one another, first stating that the petitioner's skills are "all the more important" in "because it has no public transportation," and then asserting that the petitioner "has a unique skill set that can be applied anywhere in the country – not just in Texas" (thus repeating, word for word, the assertion in letter). then repeated the assertion that the petitioner's position is difficult to fill.

of the South District Police Department was regional chair of the Planning Committee. stated: "[the petitioner] was involved intensely in all aspects of the planning process with my department and his input and suggestions were invaluable."

senior program manager for , has "also served as an adjunct professor at and serves on the Civil and Environmental Engineering Advisory Council there. stated:

> I have known [the petitioner] for over six years, since he was hired by the as an intern in 2005. . . . His duties included preparing data for use in a highly complex travel demand forecasting model used by to develop the metropolitan transportation plan, perform traffic studies, and prioritize major infrastructure improvements for funding. When his internship ended, he was hired as a full time employee of His duties and responsibilities increased and he was responsible for performing detailed transportation and traffic studies utilizing the same travel demand forecasting model. The model is highly complex, incorporating advanced traffic engineering principles, traffic flow theory, and advanced statistical analysis procedures.
>
> I was [the petitioner's] Senior Program Manager and as such was responsible for providing him with work assignments, general direction and reviewed his work from time to time. I found [the petitioner] to be detail oriented, accurate in his assignments and quick to grasp new principles. He was able to effectively combine his engineering background within a planning environment, filling a niche between the

two professions and providing a unique viewpoint to issues at hand. I believe [the petitioner] is an exceptional talent and has skills that are not easily found.

repeated the assertion that the petitioner should receive a waiver because he would be difficult to replace.

another senior program manager at , stated: "The job duties of the position and [the petitioner's] qualifications are clearly exceptional and it would be hard to replace him."

a research associate at the , Austin, previously worked with the petitioner at asserted that "the level of knowledge, expertise and experience required [for the petitioner's position] is certainly 'exceptional,' if not extraordinary," and that the petitioner has earned "valuable experience that cannot be replaced easily."

of Mesquite, Texas, stated that the petitioner performs "highly complex duties involving a very high level of expertise in the field of Traffic Engineering. These duties cannot be performed by someone right out of college, or without an advanced degree."

supervising engineer for Public Works and Engineering for the City of Texas, stated that the petitioner's "duties . . . require considerable education . . . and at least 5+ years of experience," and that "positions of this nature are very hard to fill."

The director issued a request for evidence on May 29, 2012, stating: "The petitioner must establish that the beneficiary has a past record of specific prior achievement with some degree of influence on the field as a whole." The director noted that the petitioner's initial submission did not show that others have relied on the petitioner's work. The director also stated that the petitioner had not shown that his involvement with traffic planning for football games lends his work national scope.

In response, counsel asserted that the benefit arising from the petitioner's work is national in scope because "roads and bridges . . . are connected to the State and to the national highway system." Counsel then provided information about the and its . Finally, counsel stated that the petitioner's master's thesis "was later turned into a semester course at the graduate level and taught at the Master's level for several years after [the petitioner] had graduated."

Of the three lines of reasoning presented, the information regarding the is the least persuasive. That happened to host while the petitioner worked there is a matter of coincidence rather than an endorsement of the petition, and the petitioner has not shown that the petitioner's specific role has a nationally significant effect on the or its audience. With respect to in , counsel stated that the petitioner's "contributions to this event are self-evident from the several letters provided in the initial submission." Counsel then identified eight of the initial witnesses. Most of those witnesses stated that the petitioner served on the "traffic committee" for the . The most detailed statement is assertion that the petitioner "improved and expedited traffic flow through preparation and implementation of

traffic control and operations plans for special events, including One of the named witnesses, did not mention the at all in his letter. The nature and extent of the petitioner's contribution to this one-time event is not, as counsel claimed, "self-evident" from the cited letters.

In a new letter, addressed the petitioner's involvement with

> [T]he Service has misread the responsibilities of [the petitioner's] position and mischaracterized it as just being that of a traffic engineer managing pre and post-game traffic for the and Nothing can be further from the truth. . . .
>
> I am particularly disappointed that the Service has made no mention of the pivotal role played by [the petitioner] in being part of the planning committee (Transportation Action Team) for the

stated that the director "mischaracterized" the petitioner's responsibilities, but his second letter, like his first, shed little light on what those responsibilities were. provided statistics about buses, vehicle lane usage, and parking, and stated: "Planning included logistics, and safety for vehicular, rail and air transportation and the Transportation Action Team comprised of 150 professionals from several local and national institutions." Still unclear, however, is the nature of the petitioner's role in the project and how that role is national in scope. asserted that planners for future s can benefit from lessons learned during earlier events, and stated: "This is best illustrated by the establishment of the in as a result of then changed the subject, saying nothing more about the and instead stating that the petitioner "was the engineer in charge [of] the citywide 200 miles of the fiber optic network that includes 12 miles of TxDOT fiber backbone."

Another repeat witness is who stated that the petitioner "was actively involved in high level planning" of "the first ever hosted by " stated: "The future of North Texas Transportation for decades to come will be based on the pioneering work of the Transportation Action Team of the " He did not elaborate except for the general statement that "the planning committee had to provide for legacy systems which would ensure future development of transportation options in the North Texas area." The Transportation Action Team, according to consisted of 150 members. did not explain the petitioner's role within that large group, and he did not show that the petitioner stood out from others in that group.

With respect to the petitioner's master's thesis, counsel cited a letter from associate professor at to support the claim that the thesis "was later turned into a semester course." letter, however, does not support that claim. Rather, stated: "For several years following this research, I assigned a semester project to my class in 'Transportation and Air Quality' based on [the petitioner's] thesis." Thus, the thesis was the basis for "a semester project" in an existing class, rather than the basis for the entire course as counsel claimed.

provided general information about air pollution and stated: "A system for forecasting air quality cannot, by itself, solve the problems [caused by pollution]. Forecasts . . . can however play an important role as part of an air quality management system working in concert with more traditional emissions-based approaches." did not indicate that any forecasting system based on the petitioner's models currently exists. Instead, she stated: "Using modeling techniques like the one used in [the petitioner's] research would be of vital importance and if properly used and implemented could improve the health and lives of U.S. citizens nationally."

stated:

> I understand that in the years following [the petitioner's] research, used his Master's Thesis to teach a semester project in "Transportation and Air Quality." [The petitioner's] past work on the subject has helped researchers understand and train in a critical area. It is highly likely that the University will continue to use this research to nurture future engineers in the field.

The last quoted sentence is, by nature speculative. herself did not claim that she continues to use the petitioner's work today. Rather, she stated in the past tense that she did so "[f]or several years."

The AAO has already noted similarities between various witness letters. The letter from indicated that the petitioner researched

> scenarios that could potentially affect human health. To his credit, he analyzed meteorological data over a ten-year period in search of the absolute worst case scenario. This data was then combined with traffic characteristics to estimate pollutant concentration estimated from the source using CALINE4 modeling. The results were then processed using computer modeling software (ArcGIS) to create 2D and 3D dispersion maps.

Almost exactly the same passage appeared in letter, the only difference being that the phrase "pollutant concentration estimated from the source" was shortened in letter to "pollutant concentrations source." also stated that the recipients of the petitioner's scholarship "are selected carefully and after a thorough review process. Being a recipient of the scholarship is a high honor and clearly represents the exceptional nature of a student's academic achievement and future potential." This passage exactly mirrors language from earlier letter. The pervasive use of shared language raises serious questions about who actually wrote the witness letters. The similarities suggest common authorship. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

With respect to wider application of the petitioner's research, counsel cited "[a] copy of the EPA Webpage addressing research into noxious emissions research." The petitioner submitted a printout from the web page. It does not mention the petitioner's work; it simply addresses the same subject that the petitioner's thesis did. Counsel then stated: "Further corroboration of the national scope of [the petitioner's] work can be found on the website of (counsel's emphasis). The petitioner did not submit a printout from the web site, but counsel provided the web address for the page. An attempt by the AAO to visit the cited page, resulted in an error message (printout added to record March 27, 2013). The AAO cannot presume that the Pennsylvania web page specifically discussed the petitioner or his work. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has not documented any implementation, or plans for implementation, of the petitioner's methods. The petitioner submitted no evidence that his thesis attracted any attention outside of or resulted in any concrete actions by the City of or any other entity with jurisdiction over roads at the federal, state, county or municipal level.

Furthermore, there is no evidence that the petitioner's intended future work for the City of would involve research of this kind. As previously noted, temporary student research does not continue to benefit the United States prospectively once the petitioner is no longer a student engaged in such research.

The remaining basis for the "national scope" claim is that "roads and bridges . . . are connected to the State and to the national highway system." This assertion by counsel appears to be an attempt to compare the petitioner to the beneficiary in the proceeding that led to the *NYSDOT* decision, of whom the decision stated: "While the alien's employment may be limited to a particular geographic area, New York's bridges and roads connect the state to the national transportation system. The proper maintenance and operation of these bridges and roads therefore serve the interests of other regions of the country." *Id.* at 217. The record does not show that the petitioner is responsible for the structure or infrastructure of roads. Rather, descriptions of the petitioner's duties appear to address local details. for instance, asserted that the petitioner's duties included "optimizing and retiming traffic signals and analyzing traffic signal timing plans." The petitioner has not demonstrated that tasks of this nature produce benefits that are plausibly and verifiably national in scope.

Turning to the third prong of the *NYSDOT* national interest test, counsel asserted that the petitioner "is regarded as a 'key' employee of the City and his performance reviews are outstanding. . . . Depriving the City of his services would clearly be a disadvantage." Counsel repeated the earlier claims of several witnesses that the petitioner would be difficult to replace. Counsel did not address the issue of labor certification at all, let alone explain why the City of would not pursue labor certification in a situation which, as described, seems ideally suited to the process.

Regarding the petitioner's "performance reviews," copies in the record show that a rating of 3.0 means that the employee "Fully Achieved Expectations," while a rating of 4.0 means the employee "Exceeds Expectations." The term "Outstanding" is reserved for a 5.0 rating. In 2010, rated in six areas, the petitioner received five 4.0 ratings and one 3.0, for an overall rating of 3.75 out of 5.0. In 2011, rated in seven areas, the petitioner received two 5.0 ratings, three 4.0 ratings, and two 3.0 ratings, for an overall rating of 3.95. The language of the "performance reviews" themselves contradicts counsel's claim that the petitioner's "performance reviews are outstanding."

The director denied the petition on December 5, 2012. The director described the evidence submitted and quoted from several witness letters, and concluded that the petitioner had not shown that the benefit from his work will be national in scope, or demonstrated that he "plays a significant role in [his] field." The director stated: "The quoted witnesses clearly consider the petitioner to be a well qualified Traffic Engineer. The national interest, however, is a special benefit over and above the basic qualification sought, and the threshold for that benefit is well above simply being competent and qualified to do one's job." The director added that a lack of qualified job applicants would appear to be a favorable factor in approving, rather than waiving, labor certification.

On appeal, the petitioner states:

> My expertise and experience are not easily reproduced. I was part of the 'Transportation Action Team' involved with planning transportation and for [redacted] I believe my contributions as a member of the 'Transportation Action Team' led directly to the planning for the event and its legacy is truly national in scope.

The above passage repeats a basic claim that appears several times in the record. The petitioner has not shown how the Transportation Action Team for [redacted] has had lasting national effect, and has not clarified the nature of the petitioner's role in that 150-member team. The petitioner has not shown that traffic management for [redacted] represented a substantial improvement over events in preceding years, or that planners for subsequent [redacted]s (or comparable events) have adopted ideas from the petitioner that they otherwise would not have used. The [redacted] is a significant event that attracts national attention each year, but not typically for reasons related to traffic management.

The petitioner asserts: "the Transportation Plan that I worked on had a legacy in that it was also made part of the plan for the Region's 2012 Olympic bid. This again is proof of its national character." Leaving aside the lack of evidence to support this claim, the petitioner has not explained why the local transportation plan for the Olympic Games would have greater scope than the one for the [redacted]. The petitioner simply assumes or declares both to have national scope, based not on anything inherent in the transportation plans, but on the reputations of the events themselves.

Parts of the petitioner's statement on appeal are copied almost word for word from earlier statements by counsel, such as the petitioner's assertion that [redacted] roads "are connected to the State and

to the national highway system," and the refuted claim that his master's thesis "was later turned into a semester course at the graduate level." To address these claims again would be redundant.

Regarding his master's thesis, which "determine[d] a safe roadway buffer width to protect human health from air pollutant (NOx) exposure," the petitioner stated that the thesis was "clearly not meant for publication as stated on page 4 of the Denial." The abstract of the thesis begins with a blank space after the phrase "Publication No.," a phrase that serves no purpose on a document "not meant for publication." The petitioner then asserts that his "research is critical, groundbreaking and national in scope . . . because there is no nationally coordinated effort to study and manage air quality standards on our roads and highways." The petitioner does not explain how his thesis would lead to such a "nationally coordinated effort" if it was "clearly not meant for publication," and therefore would not be read by other engineers and policymakers.

The petitioner claims:

> My research has been recognized by not just my University, City and State Governments, but also by [redacted] of the great State of Pennsylvania and is featured on his website as a model for action in that state. In other words, the impact of my research is obvious in more than one State. Therefore, the impact of my research is not unsubstantiated as claimed.

As noted previously, the petitioner did not submit a printout from the Pennsylvania web site. Counsel provided a web address that no longer functions. Therefore, the petitioner did not submit any evidence that the State of Pennsylvania not only identified the petitioner's paper "as a model for action" but actually took action, with results that supported the hypotheses advanced in the thesis. Without such evidence, the petitioner's assertion that "the impact of [his] work is not unsubstantiated" is, itself, unsubstantiated. Furthermore, there remains the point that the petitioner does not seek employment as a researcher. Therefore, the observation that he will temporarily conduct research as a student does not entitle him to permanent immigration benefits after his studies have ended.

In the appellate brief, counsel states:

> In itemizing the evidence in the Decision, the Service has omitted numerous documents that would establish the following:
>
> a. Petitioner/Beneficiary is an individual holding an Advanced Degree in the field and is also clearly exceptional.
> b. Petitioner/Beneficiary is currently employed in the City of [redacted] TX that has invested enormous sums of money in his development.
> c. There are compelling [reasons] why Petitioner/Beneficiary's field should be considered national in scope, and finally,
> d. Petitioner/Beneficiary's contributions to the field are exceptional and the relative merit of allowing him to remain in the U.S. will serve the national interest to a

> substantially greater degree than would an available U.S. worker having the same minimum qualifications.

Items (a) and (b) above are irrelevant to the appeal. Regarding (a), the director acknowledged that the petitioner is a member of the professions holding an advanced degree. Regarding (b), counsel has cited no statute, regulation, precedent decision or case law to indicate that an alien is entitled to a national interest waiver because the alien's employer "has invested enormous sums of money in his development," or that an employer's investment of this type excuses the employer from the job offer requirement that Congress built into the immigrant classification that the petitioner seeks.

Counsel repeats the claim that the petitioner's position was vacant for two years before the petitioner filled it. The unstated implication is that labor certification would be redundant, because the petitioner has already tested the local labor market and has not found a qualified United States worker who sought the job. Oversight over that process rests not with USCIS, but with the U.S. Department of Labor. A worker shortage is a valid basis for the national interest waiver only in the limited case of certain physicians, under terms set forth at section 203(b)(2)(B)(ii) of the Act and the regulations at 8 C.F.R. § 204.12. Those limited circumstances do not apply in this proceeding.

Counsel asserts that the petitioner has submitted "credible evidence to satisfy the regulatory criteria," and thereby "demonstrated, by a preponderance of the evidence, eligibility for the classification sought." In this instance, there are no specified "regulatory criteria" for the waiver except those specified at 8 C.F.R. § 204.5(k)(4)(ii):

> The director may exempt the requirement of a job offer, and thus of a labor certification . . . if exemption would be in the national interest. To apply for the exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate, as well as evidence to support the claim that such exemption would be in the national interest.

The only existing binding guidance as to the nature of qualifying evidence is the three-pronged test set forth in *NYSDOT*. Points (c) and (d), quoted above, relate to the *NYSDOT* test.

Counsel lists the evidence previously submitted in support of the petition. Counsel's descriptions of previously submitted exhibits are not always entirely accurate. For example, counsel states that, in response to the request for evidence, the petitioner submitted a "[c]opy of an award acknowledging [the petitioner's] contribution in saving the City $700,000.00." The relevant portion of the item described, labeled "Exhibit H," reads as follows. Underlined text is handwritten on the document:

> Notice of Outstanding Contribution
>
> This notice is given to [the petitioner] in recognition of the following special effort:
> Tremendous effort in processing a Stimulus Grant application, on short notice, for signal timing and LED signal indications with the potential of yielding the city over $700,000 in additional revenue. GREAT JOB!!

The certificate indicates that the petitioner won a "Center Stage Award" entitling him to "one hour off with pay," and he could "pass this original card to the Monthly Breakfast Coordinator . . . for prize drawing." The certificate did not mention any "savings" at all. Rather, the petitioner wrote a grant application. A "stimulus grant," even if approved, is a new infusion of funds, rather than "savings." Even then, the reference to the "potential" for "additional revenue" does not reveal whether or not the City of [redacted] actually received the grant in question. Clearly, counsel has not presented an entirely accurate description of this document.

Both counsel and the petitioner assert that an attempt to replace the petitioner would result in a major inconvenience to the City of [redacted] This assertion implies two main points: first, that the staffing issue is one of national rather than local importance; and second, that the national interest waiver is the only way that the City of [redacted] could continue to employ the petitioner. The AAO has already discussed the first point. The petitioner has not established why the second point is true; his supervisor simply asserted, without elaboration, that "[t]he City is not currently sponsoring immigrant petitions."

Counsel states: "Nowhere did Petitioner/Beneficiary seek a waiver of the job offer based on the importance of his profession as a Traffic Engineer. On the contrary, [the petitioner] sought to show that he was engaged in ground breaking research in his field of endeavor." Reference to the petitioner's initial submission undermines this assertion. Counsel's first statement, submitted with the petition, contained little discussion of the petitioner's research. Instead, counsel stated that the "City of [redacted] transportation future justifies prospective national benefit," and counsel discussed plans such as the Thoroughfare Development Plan and the Hike and Bike System Master Plan. Only later did the petitioner and counsel place a heavier emphasis on the petitioner's research work.

Counsel asserts that the petitioner has met his burden of proof by establishing eligibility by a preponderance of evidence. Counsel contends that the director "has not examined each piece of evidence for relevance, probative value, and credibility," but relied instead on "selective portions of various letters."

> The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). In the present proceeding, the question is not whether or not the statements in the witness letters (which comprise much of the waiver claim) are "probably true." Rather, those claims, even if entirely true, do not suffice to establish eligibility for the waiver. Meeting the preponderance of evidence standard is a matter of the quality, rather than quantity,

of evidence submitted. The petitioner's selection of witnesses who unanimously support approval of the petition does not mean that the record favors approval of the petition by a similarly lopsided margin.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The witness statements contain assertions in the petitioner's favor, but the letters either address local concerns, make general statements, or focus on research work that the petitioner performs as a student, rather than the duties he would continue to perform as a traffic engineer. The witnesses assert that the City of can ill afford to lose the petitioner's services, but there is no explanation why labor certification (which seems well suited to the situation described) is not a viable option. There is only the summary statement that the City of refuses to pursue it.

With respect to the petitioner's own claims (and those made by counsel on his behalf), the petitioner relies on inferences that lack direct evidentiary support, such as the assertion that, because the is a nationally significant event, the petitioner's involvement in traffic management for one must also, itself, have proportional national significance. The petitioner's own unsupported claims cannot meet the burden of proof. *See Matter of Soffici*, 22 I&N Dec. 165. The AAO has held:

> The standard of proof should not be confused with the burden of proof. The burden of proving eligibility for the benefit sought remains entirely with the applicant. Additionally, the "preponderance of the evidence" standard does not relieve the petitioner or applicant from satisfying . . . basic evidentiary requirements.

Matter of Chawathe, 25 I&N Dec. 375, n.7 (internal citations omitted).

What remains of the appellate brief simply repeats counsel's statement previously submitted in response to the request for evidence, and there is no need to discuss that statement a second time.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.